

Senate Study Bill 1127

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON APPEL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring the licensing of abstractors within the
2 department of commerce, establishing fees, penalties, and
3 judicial remedies, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1862SC 83
6 jr/rj/5

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1 1 Section 1. NEW SECTION. 545.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Board" means the abstractor board of examiners created
1 5 pursuant to this chapter.
1 6 2. "Bureau" means the professional licensing and
1 7 regulation bureau of the banking division of the department of
1 8 commerce.
1 9 Sec. 2. NEW SECTION. 545.2 LICENSE REQUIRED.
1 10 On and after July 1, 2010, a person shall not make,
1 11 compile, or complete or sell abstracts of title to real estate
1 12 or execute real property title searches in this state unless
1 13 the person is supervised or managed on a full-time basis by or
1 14 employs on a full-time basis an individual licensed under this
1 15 chapter.
1 16 Sec. 3. NEW SECTION. 545.3 BOARD OF EXAMINERS.
1 17 1. An abstractor board of examiners is created within the
1 18 bureau. The board shall consist of five members appointed by
1 19 the governor, subject to confirmation by the senate. Three of
1 20 the members appointed shall be licensed under this chapter,
1 21 and in compliance with section 545.4, subsection 8, paragraph
1 22 "a", and two members shall represent the general public.
1 23 Members of the board shall serve three-year, staggered terms
1 24 as designated by the governor and appointments to the board
1 25 are subject to the requirements of sections 69.16, 69.16A,
1 26 69.16C, and 69.19. Vacancies shall be filled by the governor
1 27 for the duration of the unexpired term. Members of the board
1 28 are entitled to receive a per diem as specified in section
1 29 7E.6 for each day spent in performance of duties as members
1 30 and shall be reimbursed for all actual and necessary expenses
1 31 incurred in the performance of duties as members.
1 32 2. The abstractor board of examiners shall administer the
1 33 provisions of this chapter in accordance with rules adopted by
1 34 the board pursuant to chapter 17A.
1 35 Sec. 4. NEW SECTION. 545.4 LICENSURE, EXAMINATION, AND
2 1 FEES == SEAL == NAME == MAINTENANCE OF ABSTRACT TITLE PLANT.
2 2 1. A person which makes, compiles, or completes and sells
2 3 abstracts of title to real estate or executes real property
2 4 title searches in this state shall obtain an abstractor
2 5 license issued in accordance with this chapter.
2 6 2. A firm, partnership, association, or corporation may be
2 7 granted a corporate license if at least one member or officer
2 8 or employee of the firm, partnership, association, or
2 9 corporation applies for and is granted an abstractor license,
2 10 and the firm, partnership, association, or corporation
2 11 maintains errors and omissions insurance in compliance with
2 12 minimum requirements as established by the board.
2 13 3. The annual fee for an abstractor license shall be fixed
2 14 by the board in rule, shall accompany the application for
2 15 licensure and shall be returned to the applicant if the
2 16 license is not issued, except as provided in subsection 6. A
2 17 license issued under this section expires on December 31 of

2 18 the year for which the license is issued. In the absence of
2 19 any condition or reason which might warrant the refusal of the
2 20 granting of a renewal license, the board shall issue a license
2 21 each year upon receipt of a written request of the applicant
2 22 together with the annual fee established by the board.

2 23 4. The board may issue an inactive license to a licensee
2 24 eligible for such inactive license as determined by the board.
2 25 The fee for an inactive license shall be the same as for an
2 26 active license.

2 27 5. A license shall not be issued to an applicant until the
2 28 applicant files with the board a bond or a policy of
2 29 insurance. Such insurance policy shall be a policy of errors
2 30 and omissions in an amount as determined by the board and
2 31 shall be issued by a company authorized to transact business
2 32 in this state.

2 33 6. a. A person applying for an initial license under this
2 34 section may obtain the license by complying with the
2 35 provisions of this section and by passing an examination
3 1 conducted by the board. The board shall hold at least two
3 2 examinations each year, to be held at times and places to be
3 3 fixed by the board. The board shall give notice of an
3 4 examination at least thirty days before the time fixed for the
3 5 commencement of the examination by publication in the Iowa
3 6 administrative bulletin. The fee for the examination shall be
3 7 fixed by the board by rule in an amount adequate to cover the
3 8 cost of the examination and shall be paid to the board at the
3 9 time application is made for such examination. In the case of
3 10 a firm, partnership, association, or corporation, the
3 11 examination need only be taken by those persons designated to
3 12 sign abstracts or real property searches on behalf of the
3 13 firm, partnership, association, or corporation. A licensed
3 14 firm, partnership, association, or corporation shall submit in
3 15 writing to the board a list of such designated persons as a
3 16 condition for license renewal, and shall deposit with the
3 17 board the signatures of all persons authorized to sign
3 18 abstracts or real property searches on behalf of the licensee.
3 19 b. If the applicant does not pass the examination, the
3 20 board shall deny the application for a license and retain the
3 21 examination fee.

3 22 7. The board shall establish continuing education
3 23 requirements as a condition for renewal of the license, as
3 24 provided in section 272C.2.

3 25 8. a. A licensee shall own or lease, and maintain and use
3 26 in the preparation of abstracts of title or the execution of
3 27 real property searches, an up-to-date abstract title plant
3 28 including tract indexes for real estate for each county in
3 29 which abstracts are prepared or real property searches are
3 30 executed by the licensee. The tract indexes shall contain a
3 31 reference to all instruments affecting the real estate that
3 32 are recorded in the office of the county recorder, and shall
3 33 contain records for at least the last forty years.

3 34 b. Paragraph "a" shall not apply to persons possessing a
3 35 waiver pursuant to section 16.91.

4 1 c. Paragraph "a" shall not apply to an individual
4 2 supervised, managed, or employed on a full-time basis by a
4 3 licensee under this chapter who is in compliance with this
4 4 subsection.

4 5 9. This section does not apply to a person who, without
4 6 compensation, prepares abstracts of title or executes real
4 7 property title searches, for the person's own personal benefit
4 8 or for the benefit of a member of the person's immediate
4 9 family, on real estate owned by or intending to be purchased
4 10 by or for the person or a member of the person's immediate
4 11 family.

4 12 10. This section does not apply to an employee of a bank,
4 13 credit union, or other financial institution which is
4 14 abstracting or preparing title searches that are not
4 15 subsequently sold to any other public or private entity and
4 16 that are done for the sole benefit of the institution when
4 17 making a particular junior or subordinate mortgage loan.

4 18 11. This section does not apply to a licensed attorney
4 19 admitted to practice in Iowa acting solely as an incident to
4 20 the practice of law.

4 21 Sec. 5. NEW SECTION. 545.5 UNLAWFUL FOR COUNTY OFFICERS
4 22 TO PREVENT USE OF RECORDS == CIVIL ENFORCEMENT.

4 23 A county officer shall not prevent or prohibit any person
4 24 who has complied with the provisions of this chapter from a
4 25 proper use of the records of the office of the county officer.
4 26 Judicial action to enforce the right of access shall be taken
4 27 pursuant to section 22.10.

4 28 Sec. 6. NEW SECTION. 545.6 SUSPENSION OR REVOCATION OF

4 29 LICENSE == CIVIL PENALTY == NOTICE AND HEARING.
4 30 The board, after notice and hearing conducted in accordance
4 31 with chapter 17A, may suspend or revoke a license, or impose a
4 32 civil penalty of up to one thousand dollars, for a violation
4 33 of any provision of this chapter or the rules adopted pursuant
4 34 to this chapter, or upon the conviction of a licensee for
4 35 malicious destruction of public records, or for fraudulent
5 1 practices.
5 2 Sec. 7. NEW SECTION. 545.7 CIVIL ENFORCEMENT.
5 3 A private party may bring an action against a person who
5 4 violates a provision of this chapter or the rules adopted
5 5 pursuant to this chapter to recover, in addition to actual
5 6 damages, one hundred dollars in statutory damages per each
5 7 transaction in violation of this chapter or the rules adopted
5 8 pursuant to this chapter, reasonable attorney fees, and court
5 9 costs. If the board has commenced action under section 545.6
5 10 by serving notice, a private party shall not bring a related
5 11 action based on the facts underlying the pending board action
5 12 unless specifically authorized by rule of the board.
5 13 Sec. 8. Section 272C.1, subsection 6, Code 2009, is
5 14 amended by adding the following new paragraph:
5 15 NEW PARAGRAPH. af. The abstractor board of examiners,
5 16 created pursuant to chapter 545.
5 17 Sec. 9. Section 272C.3, subsection 2, paragraph a, Code
5 18 2009, is amended to read as follows:
5 19 a. Revoke a license, or suspend a license either until
5 20 further order of the board or for a specified period, upon any
5 21 of the grounds specified in section 105.22, 147.55, 148.6,
5 22 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10,
5 23 542B.21, 543B.29, 544A.13, 544B.15, 545.6, or 602.3203 or
5 24 chapter 151 or 155, as applicable, or upon any other grounds
5 25 specifically provided for in this chapter for revocation of
5 26 the license of a licensee subject to the jurisdiction of that
5 27 board, or upon failure of the licensee to comply with a
5 28 decision of the board imposing licensee discipline.
5 29 Sec. 10. Section 272C.4, subsection 6, Code 2009, is
5 30 amended to read as follows:
5 31 6. Define by rule acts or omissions that are grounds for
5 32 revocation or suspension of a license under section 105.22,
5 33 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13,
5 34 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, 545.6,
5 35 or 602.3203 or chapter 151 or 155, as applicable, and to
6 1 define by rule acts or omissions that constitute negligence,
6 2 careless acts, or omissions within the meaning of section
6 3 272C.3, subsection 2, paragraph "b", which licensees are
6 4 required to report to the board pursuant to section 272C.9,
6 5 subsection 2.
6 6 Sec. 11. Section 272C.5, subsection 2, paragraph c, Code
6 7 2009, is amended to read as follows:
6 8 c. Shall state whether the procedures are an alternative
6 9 to or an addition to the procedures stated in sections 105.23
6 10 and 105.24, 148.6 through 148.9, 152.10, 152.11, 153.33,
6 11 154A.23, 542.11, 542B.22, 543B.35, 543B.36, ~~and~~ 544B.16, and
6 12 545.6.
6 13 Sec. 12. Section 272C.6, subsection 6, unnumbered
6 14 paragraph 1, Code 2009, is amended to read as follows:
6 15 A board created pursuant to chapter 147, 154A, 155, 169,
6 16 542, 542B, 543B, 543D, 544A, ~~or~~ 544B, or 545 may charge a fee
6 17 not to exceed seventy-five dollars for conducting a
6 18 disciplinary hearing pursuant to this chapter which results in
6 19 disciplinary action taken against the licensee by the board,
6 20 and in addition to the fee, may recover from a licensee the
6 21 costs for the following procedures and associated personnel:
6 22 Sec. 13. INITIAL ABSTRACTOR BOARD OF EXAMINERS ==
6 23 APPOINTMENTS. The initial members of the abstractor board of
6 24 examiners shall be appointed to the following terms:
6 25 1. Two members shall be appointed for a term of three
6 26 years.
6 27 2. Two members shall be appointed for a term of two years.
6 28 3. One member shall be appointed for a term of one year.
6 29 Sec. 14. EFFECTIVE DATE. This Act takes effect July 1,
6 30 2010.

6 31 EXPLANATION

6 32 This bill is a licensing practice Act creating the
6 33 abstractor board of examiners within the department of
6 34 commerce. The board is authorized to issue a license upon the
6 35 application of an individual, firm, partnership, association,
7 1 or corporation which engages in the business of preparing
7 2 abstracts of title to real property or who conducts real
7 3 property title searches, and upon payment of a license fee.
7 4 An individual who prepares abstracts of title to real property

7 5 or real property title searches is required to pass an
7 6 examination and pay an examination fee. The board is required
7 7 to adopt rules for the administration of the new provisions.
7 8 The abstractor board of examiners has authority to conduct
7 9 examinations of applicants, to establish bond and insurance
7 10 requirements, to establish continuing education requirements,
7 11 and to set fees for the examination and license. Access to
7 12 county real estate records may be compelled by judicial action
7 13 pursuant to Code section 22.10. A private party may bring an
7 14 action for damages for violations of the new provisions.
7 15 Violation of this new licensing practice Act may result in
7 16 the suspension or revocation of a license, or a civil penalty
7 17 up to \$1,000.
7 18 The bill takes effect July 1, 2010.
7 19 LSB 1862SC 83
7 20 jr/rj/5